

REMARKS

Claims 1-33 are currently pending.

The Office Action rejected claims 1-23 and 25-33 under 35 U.S.C. § 103 as obvious over U.S. patent 5,376,146 ("Casperson") in view of U.S. patent application publication no. 2003/ 0028979 ("Duffer"), and claims 1, 3, 4, 11, 13-16, 19-22 and 24-26 under 35 U.S.C. § 103 as obvious over U.S. patent 6,004,355 ("Dias") in view of Duffer. In view of the following comments, Applicants request reconsideration and withdrawal of these rejections.

The Office Action recognized that neither Casperson nor Dias disclose or suggest metasilicates. To compensate for this critical deficiency, the Office Action has cited Duffer, asserting that Duffer discloses the interchangeability of sodium metasilicate and sodium silicate as alkalizing agents and concluding that it would have been obvious to replace Casperson's or Dias's silicates with a metasilicate in view of Duffer. As explained below, the Office Action's assertions miss the point: no motivation would have existed to combine Duffer with Casperson or Dias to yield the claimed invention.

The invention compositions contain at least one oxidation dye and an alkalizing agent comprising at least one metasilicate and at least one alkanolamine. Such compositions are beneficial because they address and minimize problems associated with previous compositions containing different alkalizing agents such as malodor (for example, from ammonia) and irritation (for example, from excess

monoethanolamine). (See, page 2, lines 25-28). More specifically, the examples in the present application (at pages 13-15) demonstrate that the claimed compositions having less alkalinizing agent generally (7.45%) and less monoethanolamine specifically (5.45%) have equivalent dyeing properties to compositions containing significantly more alkalinizing agent in the form of monoethanolamine (10%). (See, page 15, lines 11-14). Such comparative compositions containing 10% monoethanolamine would be expected to cause irritation. (See, page 2, lines 27-28). Thus, the claimed compositions have equivalent dyeing properties to compositions containing 10% monoethanolamine but have significantly better sensory characteristics. That such compositions having such improved properties could have been produced is neither taught nor suggested by the cited art.

Specifically, with respect to Casperson, this reference (at col. 5, lines 12-29) states that a wide variety of alkaline reagents can be used to adjust the pH of the disclosed hair coloring compositions. Casperson states that ammonium hydroxide can be used. Casperson also states that “there can be used in place of, or together with, ammonium hydroxide any other compatible ammonia derivative as an alkalizing agent...” Examples of such other agents are alkanolamines and “organic or inorganic alkalizing agents.” Thus, Casperson appears to suggest that (1) ammonium hydroxide, alkanolamines and “organic or inorganic alkalizing agents” can be used individually as alkalizing agents; and (2) ammonium hydroxide can be used in combination with alkanolamines or “organic or inorganic alkalizing agents.” However, Casperson does

not teach or suggest that alkanolamines and “organic or inorganic alkalizing agents” can be used together, or any benefits resulting from such a combination.

In stark contrast, the claimed invention requires the presence of at least one metasilicate and at least one alkanolamine.

Thus, even assuming that the Office Action’s interpretation of Duffer is correct and Duffer suggests that silicates and metasilicates are interchangeable, the combination of Casperson and Duffer would lead one skilled in the art to use a metasilicate or an alkanolamine, but not both as is required by the present invention. In other words, Casperson provides no motivation to combine elements in such a way as to yield the claimed invention.

This is particularly true for claims 5-10 (which require the presence of specific concentration ranges of alkalinizing agents) and claims 31-33 (which require the presence of specific ratios of alkanlinizing agents): nothing in Casperson or Duffer would motivate one skilled in the art to combine the required alkalinizing agents in the specified amounts/ratios with the expectation that a composition having suitable dyeing properties would result, let alone a composition which also had improved sensory characteristics.

Regarding Dias, Dias states that magnesium silicate can optionally be added to his compositions. (Col. 31, lines 3-4). However, Dias neither teaches nor suggests that such a compound could be an alkalizing agent. In fact, Dias teaches away from such use of magnesium silicate because Dias does not include this silicate --or any silicate-- when discussing pH adjusters such as alkanolamines. (See, col. 22, lines 24-42). Thus, Dias neither teaches, suggests, nor recognizes any benefits associated with adding magnesium

silicate to his compositions (it is merely an optional component which may or may not be added to his compositions), nor does he recognize any benefits associated with combining such a silicate with an alkanolamine to yield the claimed alkanizing agent.

Duffer, on the other hand, discloses that sodium metasilicate and sodium silicate could be alkalizing agents. Thus, Dias and Duffer disclose different compounds having different functionalities. In view of this, no motivation could have existed to replace Dias's magnesium silicate (which is a magnesium salt of a silicate which is not disclosed as being an alkalizing agent) with Duffer's sodium metasilicate (which is sodium salt of a metasilicate which is disclosed as an alkalizing agent). Again, this is particularly true for claims 5-10 and 31-33 which require specific concentrations and ratios.

For all of the reasons discussed above, Applicants respectfully submit that no *prima facie* case of obviousness exists, and that the pending § 103 rejections should be reconsidered and withdrawn.

Finally, given the improved and beneficial properties associated with the claimed compositions (good dyeing properties, improved sensory characteristics), Applicants respectfully submit that sufficient evidence exists to rebut any hypothetical *prima facie* case of obviousness which may be believed to exist.

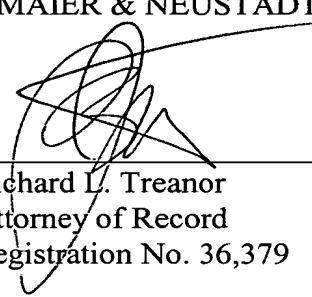
For this reason as well, Applicants respectfully request reconsideration and withdrawal of the § 103 rejections.

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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